

INTERLOCAL AGREEMENT BETWEEN
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY
AND THE CITY OF EDMONDS, GOVERNING THE 76TH AVE. W AT 212TH ST. SW
INTERSECTION IMPROVEMENTS PROJECT

This INTERLOCAL AGREEMENT (the "Agreement"), is made and entered into pursuant to chapter 39.34 RCW by and between the Public Utility District No. 1 of Snohomish County, a Washington municipal corporation (the "District"), and the City of Edmonds, a Washington municipal corporation (the "City"), together the "Parties," to coordinate the undergrounding of utilities for the City's *76th Ave. W at 212th St. SW Intersection Improvements project*.

RECITALS

- A. The City is close to completing the design of the *76th Ave. W at 212th St. SW Intersection Improvements project* ("Project"), at the intersection of 76th Ave. W and 212th St. SW, Edmonds, Washington. The intersection improvements include roadway widening for the addition of left turn, right turn, and/or bike lanes for all movements and traffic signal operation improvements in order to reduce intersection delay and improve vehicle and non-motorized transportation safety.
- B. As part of the Project, the City requires the utilities present at the intersection to replace their existing overhead systems with underground systems.
- C. To facilitate the conversion of the existing overhead systems, the City will install an underground conduit and vault system, and will construct joint trenches to accommodate the District, Frontier, Comcast, Astound Broadband, and WSDOT / City utility lines. In the joint trenches, the City will place all required conduits and vaults to accommodate the District facilities.
- D. The District will install the conductors and equipment for its new underground system. The District will also cut-over and transfer its existing customers to the new underground system and remove its overhead systems within the Project.
- E. In exchange for the Services provided by the District, the City shall pay the District the costs to design the conversions of the District's overhead system to an underground system. The City shall also pay the District costs to complete the conversion of its overhead system to an underground system.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the City agree as follows:

1. **Requirements of Interlocal Cooperation Act**

1.1 **Authority for Agreement.** This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

1.2 **Purpose of Agreement.** The purpose and intent of this Agreement is to facilitate planning, designing, constructing and coordinating the City of Edmonds' *76th Ave. W at 212th St. SW Intersection Improvements project*. This Agreement establishes the City as the entity primarily responsible for all aspects of the Project planning, design, and construction.

1.3 **No Separate Entity.** The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

1.4 **Ownership of Property.** Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with the performance of this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

1.5 **Administrators.** Each party to this Agreement shall designate an individual (an "Administrator"), which may be designated by title or position, to oversee and administer such party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

District's Initial Administrator:
Mr. Richard Dumo
Project Engineer
1802 75th St. SW
Everett, WA 98206

City's Initial Administrator:
Mr. Bertrand Hauss
Transportation Engineer
121 5th Ave. N
Edmonds, WA 98020

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

2. **Effective Date and Duration**

This Agreement shall take effect when it has (i) been duly executed by both Parties, and (ii) as provided by RCW 39.34.040, either filed with the County Auditor or posted on the City's Interlocal Agreements website. This Agreement shall remain in effect until all obligations of the Parties are discharged, unless earlier terminated pursuant to the provisions of Section 11 of this Agreement.

3. **General Provisions**

The Parties agree to the following general provisions:

3.1 Record Retention. Each party following completion of the Project shall maintain accurate records related to the Project for a period equal to the minimum required pursuant to either state or federal requirements, whichever is applicable.

3.2 Independent Contractor. The City will perform all work under this Agreement as an independent contractor and not as an agent, employee, or servant of the District. The City has the express right to direct and control the City's activities in providing the agreed work in accordance with the specifications set out in this Agreement. The District shall only have the right to ensure performance.

3.3 Sub-Contracting. Each Party may, in its sole discretion, hire one or more contractors and/or sub-contractors to perform some or all of its respective Services.

3.4 Cost Allocation.

A. Design Phase. The City shall pay the District all actual costs (time and material) to design the conversion of District's overhead system to an underground system. The District shall provide written notification to the City if additional design costs, in excess of the estimate provided in section 5.1(A)i, are necessary to complete District's design phase. The written notification shall specify the additional amount required and justification for District's increased cost.

B. Construction Phase. The City shall pay the District all actual costs (time and material) to complete the conversion of District's overhead system to an underground system in accordance with District's cost estimate provided in section 5.1(G). The District shall provide written notification to the City if additional construction costs, in excess of District's estimate provided per section 5.1(G) are necessary to complete District's construction phase. The written notification shall specify the additional amount required and justification for District's increased cost.

3.5 Additional Costs by City Contractor. The District shall pay the City for additional costs (time and material) incurred in constructing the joint trench if requested by the District or if directly attributable to errors in the District's design, as provided in this section.

A. Changes to the joint trench requested by the District shall be submitted to the City prior to the start of construction of the joint trench. The City shall submit the change request to the City's contractor to obtain a price to perform the work, and will notify the District of this price. Upon receipt, the District shall have 48 hours to review the pricing and authorize the work or withdraw the change request.

B. If the City determines that additional work in constructing the joint trench is necessary and is directly attributable to errors in the District's design, the City shall submit a change request to the City's Contractor to obtain a price to perform the work, and notify District of this price. Upon receipt, the District shall have 48 hours to review the pricing and authorize or dispute the change request prior to the City commencing the additional work.

4. **City Responsibilities**

4.1 **Plans and Specifications:** The approved and sealed plans and specifications will be completed and provided to the District prior to the City advertising the Project for construction bids. .

4.2 **Design Phase:**

- A. Prior to the District starting work under this agreement, City shall provide the District with the following information:
 - i. A written scope of work and the limits of the underground conversion work.
 - ii. The project schedule showing the completion of final designs, advertisement for construction bids and approximate start date for construction.
 - iii. The electronic drawings for the base map, utilities, and City improvements.
- B. The City shall issue the District a written notice to proceed to begin the design of the District's underground conversion of overhead utilities.
- C. The City shall conduct an initial meeting with the utility companies to discuss scope of work, design details and project schedule for completing the design phase.
- D. The City will incorporate the District's design plans into the City's 90% plans and specifications and prepare a Joint Utility Trench Plan for the utility underground conversion. The 90% designs will be provided to the District for review and comment.
- E. The City will conduct a design review meeting with the utility companies to discuss conflicts and changes identified in the 90% plans.
- F. The City will incorporate the District's comments on the 90% plans and finalize the plans, specifications and Joint Utility Trench Plan.
- G. The City will provide the District with a copy of the final plans, specifications and Joint Utility Trench Plan for the project.

4.3 **Construction Phase:**

The City Contractor shall:

- A. Provide at the Preconstruction Meeting a schedule to complete the construction of the joint trench in accordance with the Project Contract Documents.

- B. Furnish and provide the District vaults and conduits per the District's construction and materials standards and as specified in the Project Contract Documents.
- C. Provide all necessary excavation, trenching backfill and restoration for installing District's conduit and vault system. All conduit and vault installations shall be inspected by the District's inspector per section 5.2(D) prior to backfill.
- D. Proof all ducts in accordance with District standards and specifications. "Proof" as used herein is defined as verification using a mandrel that the duct system is clear and free of damage, installed to the proper grade and to the proper locations and contain pulling lines. Conduit proofing shall be performed in the presence of the District inspector, engineer, or other approved District representative.

The City Administration shall:

- A. Facilitate weekly (or as otherwise agreed by the City and District) construction coordination meetings that include the City's Project Contractor and all relevant parties participating in the joint trench.
- B. Issue the District a right-of-way permit within two (2) weeks of the District submitting a complete permit application (including any supporting documentation reasonably required by the City). The City shall waive the permit and inspection fees.
- C. Provide the District not less than two (2) working days' notice to inspect: (a) the requested area of the joint trench for placement of their vaults and conduits and (b) the vaults and conduits.
- D. Whenever any utility pole(s) are required to be temporarily supported due to excavation in proximity to such poles, the City will coordinate with the District to provide such support a minimum of two (2) working days prior to the date of work. The scheduling of District labor for the pole holds will be limited to the District's regular business hours.
- E. Provide the District with a bill of sale for all facilities installed by the City that will become part of the District's electrical system. The format for the bill of sale will be coordinated with the District and shall be submitted within forty (40) working days of the District's acceptance of the completed of installation as set forth in section 5.2(D).

5. **District Responsibilities**

5.1 **Design Phase:**

- A. The District shall provide the City with the following information within ten (10) working days of receiving the City's scope of work, as specified in section 4.2(A)i:
 - i. A design cost estimate for the District's cost to design the plans and specifications to convert the District's overhead utility system to an underground system. The District's cost estimate shall be detailed and be a good faith estimate of the cost to perform the design work. The cost estimate shall reflect a deduction for the District's design cost to complete an aerial to aerial relocation.
 - ii. Confirm any additional property rights that are needed to complete the District's conversion of its overhead utility system to an underground system.
- B. The District shall attend the City's initial design meeting as referenced in section 4.2(C).
- C. Upon receiving the City's written notice to proceed, the District shall complete the design of its conversion of overhead utilities to an underground system within forty (40) working days. The District shall provide it electronic designs, specifications and preliminary cost estimate to the City.
- D. The District shall review the City's 90% plans, specifications and Joint Utility Trench Plan and provide comments to the City within ten (10) working days of receipt of the same.
- E. The District shall attend the City's 90% design review meeting as referenced in section 4.2(E).
- F. The District shall make reasonable efforts to review the City's final plans, specifications and Joint Utility Trench Plan within ten (10) working days of receipt, and notify the City in writing if revisions to the final plans, specifications or Joint Utility Trench Plan are needed.
- G. The District shall provide a construction cost estimate for the District's cost to complete the conversion of overhead utilities to an underground system. The cost estimate shall be detailed and reflect a deduction for the District's construction cost to complete an aerial to aerial relocation. The District's construction cost estimate shall include, but not be limited to the following work:
 - i. inspect the installation of all vault and conduit installation work by a PUD inspector; (contractor installed);
 - ii. furnish and install all cables, conductors and electrical equipment for the conversion to underground, and for the removal of other equipment no longer needed;
 - iii. perform cut-over and transfer of existing customers and facilities to the new underground system where applicable; and

- iv. remove that portion of the overhead electrical system superseded by the new underground system. This includes removal of associated poles except those locations where the poles are still occupied by other utilities. (Removal of poles is the responsibility of the last utility to transfer from the pole.)
- H. The District shall provide the City with the estimated number of working days to complete the installation of cables, conductors and remove District's overhead system.
- I. The District shall attend additional City Utility coordination meetings, as necessary, to resolve all remaining design conflicts, issues and changes.

5.2 Construction Phase. The District shall maintain continued coordination with the City's Contractor regarding installation of the District's facilities. This coordination shall include, but not be limited, to the following:

- A. The District shall attend the Preconstruction Meeting.
- B. Subject to the schedule required in the City's Bid and Contract Document Specifications for 76th at 212th Intersection Improvements project, the City's Contractor shall prepare a schedule of work in accordance with the plans and specifications for City review. The District shall review and provide comments within ten (10) working days of receipt. If the District does not provide the City with comments within ten (10) working days, the schedule shall be considered accepted by the District. The District shall complete its work in accordance with the City's Contractor's schedule. The District will not be held liable for any delays in the schedule created by the City's Contractor or another utility's delay.
- C. The District will provide an inspector on-site, on two (2) working days' notice, to inspect the installation of all vault and conduit installation work. The District will not provide a daily on-site inspector, but will within two (2) working days' notice provide an inspector to inspect the requested area of the joint trench for the placement of their vaults and conduits. The District's inspector shall not direct the City's Contractor in any manner; the District inspector shall communicate all requirements and requests to the City's inspector.
- D. The District shall, within ten (10) working days after receipt of written notification of completion of installation of the District's conduit and vault, issue written notification of any deficiencies or issue written notification of acceptance. The City's Contractor will correct the deficiencies upon approval by the City of the requested work. If, after the ten (10) working day period, notification has not been received by City, then the District conduit and vault system shall be considered complete and accepted by the District.

- E. Once all sections of vault and conduit installation are completed by the City and accepted by the District, the City shall issue a Notice to Proceed to the District to commence installation of the conductors and equipment. The District or its contractor's crews may need to accommodate another utility that is trying to work in the same area. The District, or its contractor, will complete installation of the conductors and equipment in accordance with the approved schedule referenced in Section 5.2(B); provided that reasonable access to the project is given by the City's Contractor or a subcontractor in the area where the City is requesting the District to begin work. The District shall notify the City in writing when the new underground system is energized. The District will coordinate its conductor and equipment installation such that the District, or its contractor, will install as much of this equipment as possible prior to completion of the entire vault and conduit system by the City's Contractor. The District will be responsible for plant installation and wreck-out work associated with the undergrounding. This work shall include but not be limited to furnishing and installing all cables, conductors and electrical equipment for the conversion to underground, and for the removal of other equipment no longer needed.
- F. The District, or its contractor, will perform cut-over and transfer of existing customers and facilities to the new underground system where applicable. The District or its contractor will notify such customers 48 hours in advance of the pending outage.
- G. Once transfer of existing customers and facilities to the new underground system is complete, the District, or its contractor, will remove all overhead systems in accordance with the approved schedule referenced in Section 5.2(B). Utility poles with other utility provider's overhead systems will be stripped, topped and abandoned to the remaining utilities.
- H. The District will provide the Certification of Materials Origin (CMO), guaranteeing that all their products containing steel or iron (incorporated into the project) will meet all "Buy America" provisions (23 CFR 635.410, 23 USC 313). This provision applies to all products manufactured predominately of steel and iron, if the product consists of at least 90% steel or iron content when it is delivered to the jobsite for installation. The 90% is a percentage of the total monetary value of the manufactured product.
- I. Temporary support (holding) of District Utility Poles: The need to temporarily support such poles (due to excavation in their proximity) shall be verified by District, and if required, such support shall be provided by the District during the District's regular business hours.
- J. The District shall maintain any utility facilities constructed under this Agreement from the date of acceptance of the facilities by the District. The cost of any future improvements and / or maintenance, repairs, or corrections to any utility facilities

covered under the terms of this Agreement shall be the exclusive responsibility of the District in accordance with this Agreement.

5.3 Traffic Control. The District will provide traffic control and flaggers for installation of new underground conductor and devices along with overhead construction and removal when required. The District will coordinate its traffic control with other utilities, the City's Contractor and the City. In the event that lane closures are necessary for performance of work, the District shall be limited to working between the hours of 8AM to 3PM (excluding weekends and holidays) by keeping at least one lane open for flagger operation. Traffic control plans must be approved ten (10) working days in advance by the City before implementation by the District.

6. Indemnification and Hold Harmless

6.1 District's Indemnification of City. The District shall indemnify, defend and hold harmless the City, its officers, appointed and elected officials, employees and agents, from and against all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and reasonable attorneys' fees in defense thereof, for injury, sickness, liability or death to persons or damage to property or business, caused by or arising out of negligent or intentional acts, errors or omissions of the District, its officers, officials, employees and/or agents in the performance of this Agreement; provided, that in the event of the concurrent negligence of the Parties, the District's obligations hereunder shall apply only to the percentage of fault attributable to the District, its officers, officials, employees and/or agents.

6.2 City's Indemnification of District. The City shall indemnify, defend and hold harmless the District, its officers, appointed and elected officials, employees and agents, from and against all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and reasonable attorneys' fees in defense thereof, for injury, sickness, liability or death to persons or damage to property or business, caused by or arising out of negligent or intentional acts, errors or omissions of the City, its officers, officials, employees and/or agents in the performance of this Agreement; provided, that in the event of the concurrent negligence of the Parties, the City's obligations hereunder shall apply only to the percentage of fault attributable to the City, its officers, officials, employees and/or agents.

6.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of this Section are specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as with respect to the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

6.4 Survival. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

7. Insurance

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party(s).

8. **Compliance with Laws**

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

9. **Notices**

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 1.5 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

10. **Miscellaneous**

10.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein.

10.2 **Amendment.** Any amendment to this Agreement shall be specifically identified by separate written addendum agreed to by the Parties' Administrators identified in Section 1.5 of this Agreement.

10.3 **Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the state of Washington in and for Snohomish County.

10.4 **Interpretation.** This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

10.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

10.6 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

10.7 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

10.8 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the other party for whom he or she purports to sign this Agreement.

10.9 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the Parties.

10.10 No Third Party Beneficiaries. This Agreement and each and every provision hereof are for the sole benefit of the City and the District. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.


10.11 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

11. Force Majeure

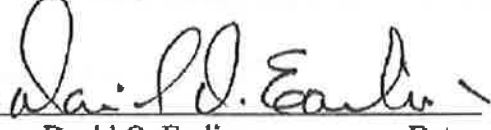
The District shall not be responsible and/or liable for delays caused by and/or resulting from factors beyond District's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, unwillingness of any property owner to grant an easement in favor of the District, failure of the City and/or the City Project Contractor to furnish timely information or timely act, or delays caused by faulty performance by the City, the City Project Contractor, other utilities, third parties and/or by contractors of any level.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

PUBLIC UTILITY DISTRICT NO.1
OF SNOHOMISH COUNTY

By:  11-18-15
Craig Collar Date
CEO/ GM

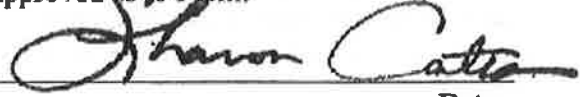
CITY OF EDMONDS

By: 
David O. Earling Date
Mayor 10.15.15

Approved as to Form:

 11.9.15
Date

Approved as to Form:


Date